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In the
Supreme Court of the United States

REGINALD WILKINSON, Director, et al.,
Petitioners,

v.

WILLIAM DWIGHT DOTSON, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE STATES OF ALABAMA, ALASKA, DELAWARE, GEORGIA, HAWAII, IDAHO, ILLINOIS, KANSAS, MARYLAND, MASSACHUSETTS, MISSISSIPPI, NEBRASKA, PENNSYLVANIA, SOUTH CAROLINA, SOUTH DAKOTA, TEXAS, VIRGINIA, AND WEST VIRGINIA AS AMICI CURIAE IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Does *Heck v. Humphrey* permit a prisoner to bring a § 1983 action claiming that his parole proceedings violate due process, even though success on the merits of this claim would result only in a new parole hearing and would not necessarily guarantee earlier release from prison?

2. Does a federal court judgment ordering a new parole hearing "necessarily imply the invalidity of" the decision at the previous parole hearing, for purposes of *Heck v. Humphrey*?

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INTEREST OF AMICI CURIAE

Pursuant to Sup. Ct. R. 37.4, amici curiae States of Alabama, Alaska, Delaware, Georgia, Hawaii, Idaho, Illinois, Kansas, Maryland, Massachusetts, Mississippi, Nebraska, Pennsylvania, South Carolina, South Dakota, Texas, Virginia, and West Virginia respectfully submit this brief in support of petitioner State of Ohio. Sitting en banc, the United States Court of Appeals for the Sixth Circuit concluded that the respondents could pursue under 42 U.S.C. § 1983 claims alleging constitutional improprieties in their respective parole proceedings. Amici contend that a petition for a writ of habeas corpus, filed under 28 U.S.C. § 2254, is the sole remedy in federal court for such claims and, therefore, urge reversal of the judgment below.

This Court has recognized that "the reason why only habeas corpus can be used to challenge a state prisoner's underlying conviction is the strong policy requiring exhaustion of state remedies in that situation – to avoid the unnecessary friction between the federal and state court systems that would result if a lower federal court upset a state court conviction without first giving the state court system an opportunity to correct its own constitutional errors." *Preiser v. Rodriguez*, 411 U.S. 475, 490 (1973) (citing *Fay v. Noia*, 372 U.S. 391, 399 n.5 (1963)). Moreover, such "comity considerations are not limited to challenges to the validity of state court convictions ...." *Id.* at 491. Rather, they have "as much relevance in areas of particular state administrative concern as [they do] where state judicial action is being attacked." *Id.* The administration of parole is unquestionably a vital part of state correctional systems. Thus, amici submit this brief in defense of "[t]he strong considerations of comity that require giving ... the States the first opportunity to correct the errors made in the internal administration of their" various parole procedures. *Id.* at 492.

STATEMENT OF THE CASE

1. Respondent William Dwight Dotson is serving a life sentence in an Ohio prison for aggravated murder. His first parole hearing was held in 1995; parole was denied. At the time, his next parole hearing was scheduled for 2005, but in 1998, the Ohio Adult Parole Authority revised its guidelines in such a manner that Dotson was unlikely to be paroled until 2013 at the earliest.

Dotson sued in federal district court under § 1983, claiming that the parole board had violated his rights by applying the new guidelines. He sought a declaration that he was entitled to the benefit of the old guidelines and a mandatory injunction requiring the parole board to give him a "prompt and immediate parole hearing" pursuant to those guidelines.

2. Respondent Rogerico J. Johnson is serving a 10-30 year sentence in an Ohio prison for aggravated robbery. His first parole hearing was held in April 1999. He, too, was denied parole. Johnson claims that the hearing violated his rights in several ways. Specifically, he contends (i) that just one parole board member conducted the hearing, while Ohio law requires the presence of a hearing officer, as well; (ii) that he was not allowed to speak on his own behalf; and (iii) that the board member based his decision to deny parole on crimes for which Johnson was never charged or convicted.

Like Dotson, Johnson sued in federal district court under § 1983 seeking declaratory and injunctive relief. Specifically, he sought to set aside the decision denying him parole and to have an immediate, new hearing.

3. In both cases, the district courts dismissed the § 1983 actions; habeas corpus, the district courts held, was the sole remedy available to respondents. Both Johnson and Dotson appealed. Their appeals were ultimately consolidated and heard en banc by the United States Court of Appeals for the Sixth Circuit. *Dotson v. Wilkinson*, 329 F.3d 463 (6th Cir. 2003) (en banc). That court reversed.

The majority of the en banc panel reasoned that the most each prisoner would gain by prevailing on his § 1983 lawsuit was a new hearing – and not necessarily an earlier release. *Id.* at 470. A § 1983 claim "necessarily implies the invalidity of a prisoner's conviction or sentence," the court held, only if it "will inevitably or automatically result in [an] earlier release." *Id.* at 471. Because, the court concluded, respondents' requests for new parole hearings would not "inevitably or automatically" result in their earlier release from prison (parole might again be denied), the bar imposed by *Heck v. Humphrey*, 512 U.S. 477 (1994), did not apply. The dissenting judges, by contrast, maintained that *Heck* barred all § 1983 claims that would "imply the invalidity of any state criminal judgments relating to the length of a prisoner's incarceration" – including "judgments" of state parole boards – whether or not a favorable resolution of the claim would itself automatically entitle the prisoner to an earlier release. 329 F.3d at 474.

SUMMARY OF THE ARGUMENT

This case is controlled by *Heck's* jurisprudential forebear, this Court's foundational decision in *Preiser v. Rodriguez*, 411 U.S. 475 (1973). There, this Court held, in no uncertain terms, that when an inmate challenges the fact or duration of his physical confinement and "seeks ... immediate release or a speedier release," his "sole remedy is a writ of habeas corpus." *Id.* at 500. Here, on any meaningful understanding of the term, respondents are assuredly "seek[ing]" speedier release from prison. Specifically, they are "seek[ing]" parole, which this Court has accurately defined as "release from prison, before the completion of sentence ...." *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972). Indeed, even the court of appeals below recognized that "an incarcerated person obviously *seeks* to be released from confinement" and that he "cares not a whit as to how that happens ...." *Dotson v. Wilkinson*,

329 F.3d 463, 472 (6th Cir. 2003) (en banc) (emphasis added). That fact, under *Preiser*'s plain language, is conclusive, and forbids respondents' resort to § 1983.

What this Court in *Preiser* called the "policy reasons underlying the habeas corpus statute," 411 U.S. at 490, further confirm that decision's applicability here. Specifically, the habeas statute's exhaustion requirement counsels in favor of allowing state courts to address in the first instance alleged errors regarding a state prisoner's term of imprisonment. *See id.* It does not matter that respondents are not frontally attacking their convictions, but are instead challenging an administrative decision concerning their parole (and thus prospects for release). *Preiser* makes clear that the rule of exhaustion, which is "rooted in considerations of federal-state comity," has "as much relevance in areas of particular state administrative concern as it does where state judicial action is being attacked." *Id.* at 491. Further, like the questions of prison administration that this Court faced in *Preiser*, parole is an issue "intricately bound up with state laws, regulations, and procedures." *Id.* at 491-92. And, indeed, given that parole does not even exist in the federal system, state courts are arguably better situated than federal courts to address – at least as an initial matter – parole-related claims. Simply put, if there is any group of claims that it makes sense to filter through the state courts (by way of the habeas statute's exhaustion requirement), it is claims involving parole eligibility and suitability.

ARGUMENT

This case presents the Court yet another opportunity to address questions arising at the "intersection" of 42 U.S.C. § 1983 and the habeas corpus statute, 28 U.S.C. § 2254. Specifically, this Court must determine whether respondents' parole-related claims may proceed under § 1983, or whether, instead, respondents must pursue those claims on habeas.

I. *Preiser* Governs Suits Seeking Equitable Relief From Confinement and Precludes Respondents' Section 1983 Claims.

Since its pathmarking decision in *Preiser v. Rodriguez*, 411 U.S. 475 (1973), this Court has had occasion to deal with the § 1983-habeas "intersection" on numerous occasions. *See, e.g., Heck v. Humphrey*, 512 U.S. 477 (1994); *Edwards v. Balisok*, 520 U.S. 641 (1997); *Muhammad v. Close*, 124 S. Ct. 1303 (2004). *Preiser*, however, remains the fountainhead. A proper resolution of this case begins and ends with *Preiser*.

Initially, the fact that respondents' claims may fit within the broad language of § 1983 is not determinative of the issue presented. "[D]espite the literal applicability of [§ 1983's] terms, the question remains whether the specific federal habeas corpus statute, ... designed to provide the means for a state prisoner to attack the validity of his confinement, must be understood to be the exclusive remedy available in a situation ... where it ... clearly applies." *Preiser*, 411 U.S. at 489. This Court has, of course, concluded that habeas is the sole federal remedy in that circumstance. *See id.* at 490 ("Congress has determined that habeas corpus is the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement, and that specific determination must override the general terms of § 1983."). Indeed, a contrary result would sanction the circumvention of limitations (among them, the exhaustion of state remedies) intentionally imposed on the

availability of habeas relief. Accordingly, the rule coming out of *Preiser* is straightforward: If a claim fits within the habeas statute's ambit, § 1983 is not an available remedy.

But what is the nature of the field that the habeas statute occupies? At least for purposes of this case, *Preiser* answers that question, as well. In *Preiser*, this Court considered whether the claims of three state prisoners regarding "good-conduct-time credits" were cognizable under § 1983. 411 U.S. at 476. Specifically, the inmates sought injunctive relief restoring credits they asserted had been unconstitutionally revoked. Concerning the scope of habeas corpus (and, by mirror image, § 1983), the *Preiser* Court "h[e]ld ... that when a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." *Id.* at 500. Indeed, this Court underscored that where a prisoner's claim "goes directly to the constitutionality of his physical confinement itself and seeks either immediate release from that confinement or the shortening of its duration," it is within "the core of habeas corpus" and, thus, by definition, outside the scope of § 1983. *Id.* at 489.

So, then, do respondents' claims here "challeng[e]" or "go[] to" the duration of their confinement and "seek[]" speedier release? That question virtually answers itself. The ordinary meaning of the term "seek," as used by this Court in *Preiser*, fits respondents' claims to a tee: "To try to obtain (something advantageous); to try to bring about or effect (an action, condition, opportunity, or the like." 14 *Oxford English Dictionary* 876-77 (2d ed. 1989). Respondents, to be sure, are "[t]ry[ing] to obtain" or to "bring about" an "advantageous" "condition" – namely, parole. And we are not just playing word games here. The court of appeals itself emphasized (correctly) that "an incarcerated person obviously *seeks* to be released from confinement," and that he "cares not a whit as to how that

happens ...." *Dotson*, 329 F.3d at 472 (emphasis added). Under *Preiser*'s plain language, that fact is determinative.

The Sixth Circuit took what should have been a relatively simple case – inasmuch as it is governed by this Court's binding precedent – and made it harder. The court of appeals managed to evade *Preiser*'s clear rule only by ignoring what it "kn[ew] on a human level [was] certainly there" – namely, a request for early release – and by focusing not on what the prisoner-plaintiffs were actually "seek[ing]" (as *Preiser* itself requires) but, instead, on the question whether their claims would "inevitably or automatically result in earlier release." *Id.* at 471-72. Because, the court reasoned, respondents' challenges here would only "result in a new hearing" and because "parole is discretionary," there was no scientific, statistical certainty that earlier release would result. *Id.* at 470.

That, with all respect, is the height of formalism. There simply is no conceivable reason, other than for the purpose of obtaining earlier release from his confinement, that an inmate would go to the trouble of challenging the parole procedures applied to him. As this Court has accurately described it, "[t]he essence of parole is release from prison, before the completion of sentence ...." *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972). Because respondents' parole-based challenges plainly "seek[]" early release from prison, they fall squarely within *Preiser*'s mandate that they proceed on habeas. *See* 411 U.S. at 489, 500. The Sixth Circuit's contrary holding not only contravenes *Preiser*, but has no footing in reality.[1]

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[1] The issue here has also arisen in the context of inmates seeking access to DNA evidence for testing – the question being whether such a suit may be brought under § 1983 on the ground that it does not inevitably, automatically, necessarily invalidate the underlying conviction. In such a case, there is, of course, a "scientific possibilit[y]" that the results of DNA tests may be "inconclusive," "insufficiently exculpatory," or even "inculpatory." *Harvey v. Horan*, 285 F.3d 298,

There is one final point that deserves mention. The logic underlying the Sixth Circuit's decision here – that where an inmate's suit will not "inevitably or automatically" result in his release it may proceed under § 1983 – has ripple effects that radiate well beyond the parole context. Indeed, the court of appeals' reasoning applies equally to a prisoner's action challenging his criminal conviction per se. That prisoner's suit, even if successful, will not (at least in the normal course) "inevitably or automatically" result in his freedom; instead, it will win him a re-trial – at which, of course, he may well be re-convicted. But surely no one would contend, based on the inherent uncertainty of criminal litigation (and, thus, the possibility of a second conviction), that an inmate could file a § 1983 action frontally attacking his conviction and demanding a new trial. That action – perhaps more than any other – plainly sounds in habeas. The Sixth Circuit's decision, which would apparently put even that suit on the § 1983 side of the line, would empty the habeas statute of any real meaning.

II. Nothing in *Heck* Suggests a Different Analysis or Result.

The court of appeals reached the strained result it did by fastening on language in *Heck v. Humphrey* to the effect that a claim must proceed on habeas if it would "necessarily imply the invalidity" of his conviction or sentence. 512 U.S. at 486-87. Again, by the Sixth

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308 (4th Cir. 2002) (Luttig, J., opinion respecting denial of rehearing en banc). There is no basis, however, for slicing the bologna so thin. As Judge Wilkinson correctly emphasized in holding for the Fourth Circuit that DNA requests must proceed on habeas, an inmate seeks DNA evidence "for one reason and one reason only – as the first step in undermining his conviction." *Harvey v. Horan*, 278 F.3d 370, 375 (4th Cir. 2002). The same is true of respondents' challenges to their parole proceedings. They seek new parole hearings for one reason and one reason only – as the first step toward obtaining early release.

Circuit's reasoning, a claim only "necessarily impl[ies] the invalidity" of an inmate's incarceration when it will "inevitably or automatically result" in earlier release. *Dotson*, 329 F.3d at 471. The court of appeals' reliance on *Heck*'s "necessarily imply" language was misplaced, for at least two reasons. First, the *Heck* Court did not walk away from, but instead embraced and reiterated, *Preiser*'s holding that "habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and *seeks* immediate or speedier release ...." 512 U.S. at 481 (citing *Preiser*, 411 U.S. at 488-90) (emphasis added). Because all seem to agree that respondents are "seek[ing]" early release, *see supra* at 6-7, their suits are not cognizable under § 1983.

Second, even to the extent that *Heck* purports to establish a standard different from the one articulated in the watershed *Preiser* decision, *Heck* is by its own terms inapplicable to respondents' complaints here, which request mandatory injunctive relief (in the form of new parole hearings at which they surely hope to secure early release from prison). What the passage from *Heck* on which the Sixth Circuit seized actually says is that "*when a state prisoner seeks damages in a § 1983 suit*, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." 512 U.S. at 487 (emphasis added). Indeed, the *Heck* Court emphasized that Roy Heck's case was "clearly not covered by the holding of *Preiser*" for the very reason that he had *not* sought injunctive relief from a sentence but had instead sought "monetary damages, as to which he could not 'have sought and obtained fully effective relief through federal habeas corpus proceedings.'" *Id.* at 481 (quoting *Preiser*, 411 U.S. at 488). Put simply, *Preiser* is an injunctive-relief case, *Heck* was a damages case. *See generally Heck*, 512 U.S. at 478 ("damages"), 481 (same), 482 (same), 483 (same), 486 (same), 487 (same), 488 (same), 489 (same), 490 (same); *see also Muhammad*, 124 S. Ct. at 1304 (*Heck* rule applies to "§ 1983 damages action[s]").

Because respondents here have sought injunctive relief, this, in short, is a *Preiser* case, not a *Heck* case. And for all of the reasons explained in Part I above, because respondents' parole-related challenges "go[] to" their confinement and "seek[]" speedier release, they must proceed via habeas; they are not cognizable under § 1983.

To the extent that the *Preiser* standard (which applies to claims for injunctive relief) sweeps more broadly, and precludes more § 1983 actions, than does the *Heck* rule (applicable to damages claims), there is good reason. There is a very real difference in the extent to which each type of suit – for damages on the one hand, for injunctive relief on the other – should be viewed as circumventing the habeas statute and its attendant restrictions. In the case of a plaintiff who seeks only a damages remedy for an allegedly unconstitutional conviction or sentence, the circumvention of the habeas statute occurs, if at all, only by indirection. The damages plaintiff could not have obtained the monetary relief he seeks in a habeas proceeding, *see Preiser*, 411 U.S. at 488, and his suit, even if successful, will not *ipso facto* give him the equitable relief that habeas corpus was designed to provide; rather, to complete the cycle of circumvention, he will have to file a second suit for injunctive relief and convince a second judge to give the § 1983 damages judgment preclusive, precedential, or persuasive effect. In stark contrast, a plaintiff who files a § 1983 action seeking injunctive relief from his conviction or sentence – *the very relief he could have sought in a habeas corpus petition* – essentially thumbs his nose at the habeas statute's requirements.

The two situations are different, and they call for different rules. It makes sense to give more leeway – in the form of a rule that forecloses only those claims that "necessarily imply" a judgment's invalidity – to a § 1983 plaintiff who wants only money, and whose suit therefore may be used only indirectly (if at all) to circumvent traditional habeas rules and restrictions. By the same token, a stricter rule – one that broadly prohibits all claims "seek[ing]" release from confinement – is

warranted in the case of suits for injunctive relief from state convictions or sentences, in which the circumvention of the habeas statute is patent, immediate, and certain to occur.[2]

In any event, the important point here is that no matter what standard *Heck* may have established for § 1983 suits seeking damages – and no matter why the *Heck* standard may be more permissive than *Preiser*'s – respondents' requests for injunctive relief are governed by *Preiser*, not *Heck*. Accordingly, respondents' claims "seek[ing]" early release from confinement are not cognizable under § 1983.[3]

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[2] The fact that respondents here also sought declaratory relief does not change matters. Just as the demand for declaratory relief in *Edwards v. Balisok*, 520 U.S. 641 (1997), was for all practical purposes adjunct to the request for damages – this Court twice referred to Balisok's "claim" (singular) for "damages and declaratory relief," *id.* at 643, 648 – respondents' demands here for declaratory relief do not stand alone, but are instead part and parcel of their principal requests for mandatory injunctive relief. However their requests for relief are characterized, respondents seek precisely the sort of equitable relief available under the habeas statute; accordingly, *Preiser* controls. In any event, this Court has recognized that declaratory relief can be every bit as injurious to States' comity interests as injunctive relief. *See, e.g., Samuels v. Mackell*, 401 U.S. 66, 71-72 (1971) ("[O]rdinarily a declaratory judgment will result in precisely the same interference with and disruption of state proceedings that the longstanding policy limiting injunctions was designed to avoid.").

[3] In *Balisok*, this Court suggested in dicta that *Heck* might apply to a claim seeking "prospective injunctive relief." 520 U.S. at 648. The issue, however, was "neither briefed nor argued" nor definitively decided by the Court. *Id.* at 649. Respondents in this matter, moreover, do not seek "prospective injunctive relief" in the *Balisok* sense – *i.e.*, purely forward-looking, systemic relief. Rather, they seek the invalidation of administrative decisions already made regarding their own parole statuses.

III. Considerations of Federalism and Comity Counsel Dismissal of Respondents' Claims.

Preiser's "hold[ing]" – that "when a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus," 411 U.S. at 500 – is buttressed by what this Court there called the "policy reasons underlying the habeas corpus statute," *id.* at 490. Specifically, the habeas statute's exhaustion requirement "avoid[s] the unnecessary friction between the federal and state court systems that would result if a lower federal court upset a state court conviction without first giving the state court system an opportunity to correct is own constitutional errors." *Id.* (citing *Fay*, 372 U.S. at 399 n.5). Thus, considerations of comity and federalism weigh heavily in favor of allowing state courts to address, in the first instance, alleged errors regarding a prisoner's term of imprisonment. *See, e.g., O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (2001) ("Comity thus dictates that when a prisoner alleges that his continued confinement for a state court conviction violates federal law, the state courts should have the first opportunity to review this claim and provide any necessary relief.").

As noted above, "[t]he essence of parole is release from prison, before the completion of sentence ...." *Morrissey*, 408 U.S. at 477. Accordingly, parole bears directly on a state prisoner's continued confinement. The parole power is a mechanism by which to regulate "the length of confinement" – a subject at "the heart of habeas corpus." *Preiser*, 411 U.S. at 498. Because of its integral role in the penological system, and because it bears so directly on a prisoner's continued confinement, the prospect of parole is, for purpose of the questions presented here, part and parcel of the sentence imposed. *Cf. Rummel v. Estelle*, 445 U.S. 263, 280-81 (1980) (rejecting claim that a life sentence imposed under a Texas recidivist statute violated the Eighth Amendment, in part, on the basis that

the sentence carried a "possibility of parole"). It is without question that a state prisoner may not bypass the exhaustion requirement when challenging the validity of his or her sentence. *See Heck*, 512 U.S. at 481 ("[H]abeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release."). He or she should similarly be precluded from circumventing the limitations on habeas relief when challenging the application of a State's parole proceedings.

The fact that an administrative decision is at issue here – as opposed to a judicial determination – makes no difference to the analysis. This Court has expressly refused to limit the scope and importance of the exhaustion requirement to state judicial determinations. *Preiser*, 411 U.S. at 491. Rather, "[t]he rule of exhaustion in federal habeas corpus actions is rooted in considerations of federal-state comity ... and it has as much relevance in areas of particular state administrative concern as it does where state judicial action is being attacked." *Id.* Thus, it is as important to Ohio's administration of its parole procedures as it would be if respondents were directly attacking their convictions.

At the risk of belaboring the obvious, Ohio has a strong interest in supervising the application of its own parole procedures. In dismissing the § 1983 claim seeking restoration of good-time credits in *Preiser*, this Court had difficulty "imagin[ing] an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." *Id.* at 491-92. The reasoning underlying the Court's conclusion in that regard applies equally with respect to state parole proceedings. Without question, parole is an area "intricately bound up with state laws, regulations, and

procedures ...." *Id.* Because, moreover, parole does not exist in the federal system,[4] state courts are arguably better equipped than federal courts to consider – at least as an initial matter – parole-related claims. Put simply, issues arising out of parole proceedings are "most efficiently and properly handled by the state administrative bodies and state courts, which are, for the most part, familiar [with the state specific procedural requirements] and in a better physical and practical position to deal" with such matters. *Id.*

There is no logical basis upon which to divorce the policy reasons underlying the habeas corpus statute from a State's parole proceedings. "Congress has determined that habeas corpus is the appropriate remedy for state prisoners attacking ... the length of their confinement ...." *Id.* at 490. Because, as noted, the very "essence of parole is release from prison, before the completion of sentence," *Morrissey*, 408 U.S. at 477, parole bears directly on the "length of confinement" – a matter at "the core of habeas corpus," *Preiser*, 411 U.S. at 489. Thus, "[t]he strong considerations of comity that require giving a state court system that has convicted a defendant the first opportunity to correct its own error ... also require giving the States the first opportunity to correct any errors made in the internal administration" of their respective parole procedures and determinations. *Id.* at 492.

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[4] Parole was abolished in the federal system by the Sentencing Reform Act of 1984, Pub.L. No. 98-473, 98 Stat.1987, tit. II, ch. II, § 212(a)(2).

CONCLUSION

For the foregoing reasons, the judgment should be reversed.

Respectfully submitted,

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